IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 265 of 2007
In
SPECIAL CIVIL APPLICATION No. 3740 of 2007
with
CIVIL APPLICATION No. 3717 of 2007
In LETTERS PATENT APPEAL No. 265 of 2007
With
LETTERS PATENT APPEAL No. 266 of 2007
In SPECIAL CIVIL APPLICATION No. 3741 of 2007
With
CIVIL APPLICATION No. 3718 of 2007
In LETTERS PATENT APPEAL No. 266 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL PRAVINABEN DASHRATHLAL - Appellant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR YATIN OZA, SR. ADVOCATE, for MS ROMA I FIDELIS for Appellant(s):1,
MR SUNIT SHAH, GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 28/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

ADMIT. Learned Government Pleader Shri Sunit Shah waives service in both the appeals.

2. In these appeals, a common judgment delivered in Special Civil Applications Nos. 3740 and 3741 of 2007 dated 9th February, 2007 has been challenged and, therefore, at the request of the learned advocates, both the appeals have been heard together and decided by this common judgment.

3. The facts giving rise to the appeals, in a nutshell, are as under:

3.1 The appellants-petitioners had passed Higher Secondary Certificate Examination with science subjects i.e. from the Science Stream. They applied for being appointed to the post of Vidya Sahayak (a post similar to a primary school teacher) under one of the schemes framed by the respondent State of Gujarat. For being admitted to PTC course,

reservation has been made to the effect that 30% of the admissions are given to students from the science stream. Upon passing HSC examination from science stream, the appellants-petitioners were admitted to PTC course, and upon completing the said course successfully, they have applied for being appointed to the post of Vidya Sahayaks. It is the case of the appellants-petitioners that though they have secured very good marks at PTC course , they are not likely to be selected as Vidya Sahayaks because, in the merit list, which is to be prepared for appointment to the post of Vidya Sahayaks, their numbers would be at such a low place that they would not be appointed to the said post.

3.2 According to the appellants, in the process of selection as Vidya Sahayaks, 40% weightage is given to the marks secured at HSC Examination, whereas 60% weightage is given to marks secured at PTC examination. Thus, 40% weightage is being given to marks secured at HSC Examination, and as the appellants had secured relatively less marks at HSC Examination, the appellants shall not be selected as Vidya Sahayaks.

3.3 It was their case before the learned Single Judge that so as to have more students from the science stream as Primary School Teachers/Vidya Sahayaks, the State of Gujarat had framed a policy, whereby 30% reservation was made for students from the science stream for being given admission to PTC

course. Once reservation is given to the science stream students at the time of admission, according to the appellants, in the matter of selection of Primary School Teachers/Vidya Sahayaks also, some reservation should be provided for science stream students so that such trained teachers from the science stream can teach subjects like Science and Maths in a much better manner than other teachers, who are from the General Stream, that is, those who had opted for subjects other than Science and Maths.

3.4 It was their case before the learned Single Judge that unless some reservation is provided for appointment to the post of Vidya Sahayaks for the science stream candidates, the purpose with which admission was given to science stream students at PTC course would become meaningless as relatively very few science stream students are ultimately selected as Vidya Sahayaks.

3.5 After considering the aforesaid submissions and looking to the facts of the case, the petitions have been rejected by the learned Single Judge mainly for the reason that in the case of Parmar Alpaben v. State of Gujarat, 2004 (3) GLR 2429, a Division Bench of this court has held that simply because 30% reservation was given at the stage of admission to PTC course to students from the science stream, claim of such science stream candidates for reservation in employment on that basis was not justified. In view of the aforesaid judgment delivered by the Division

Bench, which was binding upon the learned Single Judge, the petitions have been rejected. It was also observed by the learned Single Judge that it would not be the function of the court to give direction with regard to making some change in the policy and, therefore also, the petitions could not have been entertained. Moreover, it was also the view of the learned Single that the issues involved in the petitions pertained to a policy decision of the State and, therefore, the court did not think it proper to interfere with the policy decision taken by the Government.

4. Being aggrieved by the aforesaid judgment, these appeals have been filed. Sr. Advocate Shri Yatin Oza appearing for the appellants-petitioners has submitted that the policy decision taken by the State of Gujarat is unjust and improper. It has been submitted that reservation was provided for science stream students for admission to PTC course so as to see that more candidates from the science stream are appointed as Primary School Teachers/Vidya Sahayaks so that the students can be taught Science and Maths subjects by better equipped teachers. It has been submitted by him that those students, who have passed HSC Examination from the science stream, are better teachers so far as subjects of Science and Maths are concerned and it would be in the interest of the students of primary schools if some Vidya Sahayaks with science background are appointed as teachers/vidya sahayaks. Only for the said reason,

reservation to the extent of 30% had been provided to science stream students for admission to PTC course.

5. According to him, after providing reservation at admission stage for PTC course, if adequate number of Vidya Sahayaks are not appointed from the science stream, the entire purpose with which admission was given to the students of science stream to PTC course would become futile and in that event the students would not get good teachers to teach them subjects of science and maths.

6. He has further submitted that students from the science stream, who secure very good marks at HSC Examination, normally opt for their higher education in subjects of medicine, engineering, pharmacology, etc. and therefore those students, who are not very bright, opt for PTC course. If such students are also not given a chance to become Vidya Sahayaks, the purpose with which reservation was made for the students of science stream would be futile and those candidates, who have undergone PTC course, would ruin their career.

7. He has ended his submissions by saying that in the process of selection of Primary School Teachers/Vidya Sahayaks, 40% weightage is given to marks secured at HSC Examination. According to him, either the said weightage should not be given or there should be reservation for candidates of science stream in the matter of appointment to the posts of

Vidya Sahayak so as to see that adequate candidates with science/maths background are appointed as teachers who can teach subjects of Maths and Science in a better manner.

8. On the other hand, learned Government Pleader Shri Sunit Shah appearing for the respondent authorities has submitted that the learned Single Judge was justified in rejecting the petitions because, the appellants-petitioners do not have any right to be appointed as Vidya Sahayaks simply because they are from the science stream.

9. It has been submitted by him that there is a difference between making reservation at admission stage for studies of PTC course and reservation in the matter of employment as Vidya Sahayaks. Simply because some reservation has been made for students of science stream for admission to PTC course, that would not mean that those who have been given admission, in pursuance of the reservation policy, should also be given appointment as Vidya Sahayaks. As there is no reservation in the matter of giving employment, the appellants-petitioners cannot have any right to be appointed only on the basis that they had availed benefit of reservation at the admission stage in PTC course.

10. He has further submitted that the policy with regard to recruitment of Vidya Sahayaks has not been challenged in the petition and, therefore, the

appellants cannot expect the State authorities to change the policy so as to accommodate or so as to do special favour to those candidates who are from the science stream.

11. The learned Government Pleader has lastly submitted that the Vidya Sahayaks, teach students of Std. I to VII, and at that level subjects of Science and Maths are not so difficult that highly skilled science and maths teachers are required to teach the students. He has submitted that at the primary school level, normally, one teacher is teaching all the subjects in one particular class, be it Std. I or Std. VII. Thus, no specialization is required for Primary School Teachers/Vidya Sahayaks except in cases where subjects like Drawing, Music or Physical Education are concerned.

12. For the aforesaid reasons, he has submitted that the petitions have been rightly rejected by the learned Single Judge and the appeals also deserve to be dismissed.

13. We have heard the learned advocates at length and have gone through the impugned judgement.

14. We are in agreement with the view expressed by the learned Single Judge. However, so as to examine the matter in detail, we have also gone through the judgment delivered by the Division Bench of this court, which has been referred to hereinabove, and we

have found that the observations made by the Division Bench incorporated in the impugned judgment by the learned Single Judge, are also well-founded. At the time when the aforesaid judgment was delivered by the Division Bench in the case of Parmar Alpaben v. State of Gujarat (supra), the issue involved in these petitions was incidentally referred to and that was not the main issue as it is in the instant case. We have, therefore, re-examined the issue and we are also of the opinion that the earlier view taken by the Division Bench in the case of Parmar Alpaben v. State of Gujarat (supra) is quite sound, which does not require any reconsideration.

15. It is pertinent to note the circumstances in which reservation was made for the students of science stream for admission to PTC course. It is true that bright students of the science stream normally opt for further studies in the subjects like medicine, engineering, pharmacology, computer science, etc. Some of the average students very often opt for graduation with science subjects and weak students opt for other faculties. Because of the aforesaid reasons, those weak students from the science stream, were never getting an opportunity to get admission to PTC course because they had to compete with reasonably good or better students from the general stream. In the aforesaid circumstances, the State of Gujarat had framed a policy of reservation to the extent of 30% for the students of science stream so that those science stream students

can also get an opportunity to undergo PTC course, and if ultimately found suitable, can procure jobs as Primary School Teachers/Vidya Sahayaks.

16. For the aforesaid reasons, in the interest of such candidates, reservation to the extent of 30% was made for the students of science stream for admission to the PTC course.

17. It is pertinent to note that the aforestated reservation had not been made for the benefit of students studying in primary schools. We have noted that education of the students of primary schools would not be adversely affected if they are taught subjects of maths and science by teachers who had passed HSC Examination from the general stream because the level at which the said subjects are taught at the primary schools is quite elementary. At the High School/Higher Secondary level subjects of science and maths are taught in greater detail and, therefore, teachers having specialized knowledge of science and maths are appointed for teaching the said subjects, but at present we are concerned with students of primary schools and, therefore, we need not look at the students of high school.

18. We may further add here that provisions of the Bombay Primary Education Rules, 1949 govern the provisions relating to qualifications of primary school teachers. Schedule-F to the said Rules provides for qualifications required for being

appointed to the post of a primary teacher. Clause 6 of the said Schedule reads as under:

"6. **Qualification**.- The management shall appoint only trained teachers who have passed the Secondary school Certificate Examination and also the Primary Training Certificate Examination. For special subjects, teachers shall be recruited in accordance with the qualifications laid down by the Government for such teacher under the vacancies in the District Educational Committees or Municipal School Boards in the State from time to time."

19. Thus, the aforesaid clause does not say whether a candidate should be from Science Stream or General Stream. If there is no such provision in the Rules, in our opinion, it would not be proper for this court to add something to the said Rules so as to legislate on the subject.

20. In the circumstances, the submission made by Sr. Advocate Shri Oza appearing for the appellants that education of the students of primary schools would be adversely affected if they are taught science and maths subjects by teachers who had not studied in science stream is not correct. We do not accept the said argument.

21. It is pertinent to note that there is only one class teacher who teaches all the subjects in a particular class in primary schools. The said teacher is reasonably well-versed with all the subjects. A teacher, who has passed Primary Training

Certificate Examination, knows thoroughly as to how a young child is to be taught. He knows the teaching method and, therefore, the skill he acquires while undergoing PTC course is used by him for teaching all the subjects to the students. In the circumstances, we do not think that even the policy of the State is wrong when a teacher appointed in a primary school, teaches all the subjects to primary school students and therefore also the averments with regard to specialization made by Sr. Advocate Shri Oza do not appear to be well-founded.

22. It is also worth noting that no assurance was ever given to the students from the science stream, who were given admission to PTC course on the basis of special reservation made for them, that they would be given employment upon completion of their studies of PTC course. Such students, who undergo PTC course have to compete with other students, and if they are found relatively better, they get an opportunity of being appointed as Vidya Sahayaks. The question of reservation policy in employment is to be decided by the State and not by this Court. Looking to the facts of the case, reservation for candidates who have done studies in science stream may not be required for appointment to the post of Vidya Sahayak.

23. It is also pertinent to note that the appellants-petitioners had not challenged the policy with regard to recruitment and, therefore, the

learned Single Judge rightly did not examine the policy. There cannot be any dispute to the fact that it is for the State to frame the policy in such matters. In our opinion, even if the policy regarding recruitment would have been challenged, possibly, this court would not have interfered with the said policy. In the case of **Asif Hameed and other v. State of Jammu and Kashmir,** AIR 1989 SC 1899, the Hon'ble Supreme Court has observed as under:

> "When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which, under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

24. We are of the view that the policy with regard to recruitment of teachers, which is being followed by the respondents, is neither unconstitutional nor illegal and therefore we would not like to interfere with the process of recruitment which is likely to be

finished in a near future. The policy, which has been framed by the State, must be on the basis of recommendations of experts in the educational field and that too upon overall assessment of the requirements of the students and, therefore, this court would not interfere with the same, especially when no arbitrariness is found in the policy. In the circumstances, we would not like to examine the policy with regard to giving weightage to marks secured by the candidates at HSC and PTC examinations. On the contrary, looking to the facts of the case, we believe that due weightage has been rightly given to marks secured at all important examinations so that candidates who are having consistently good academic career get a chance to be appointed.

25. For the aforesaid reasons, in our opinion, the learned Single Judge was absolutely justified in rejecting the petitions. As we do not find any substance in the appeals, the appeals are dismissed.

In view of dismissal of the appeals, the Civil Applications do not survive and they are disposed of.

(Anil R. Dave, J.)

(H.N. Devani, J.)

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